

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION

RASHADI ANDRE WEARING, ) Civil Action No. 7:07-cv-00253  
Petitioner, )  
 )  
v. ) 2255 FINAL ORDER  
 )  
 )  
UNITED STATES OF AMERICA, ) By: Hon. Norman K. Moon  
Respondent. ) United States District Judge

For the reasons stated in the accompanying Memorandum Opinion, it is now

**ORDERED and ADJUDGED**

as follows:

1. The Report and Recommendation of United States Magistrate Judge B. Waugh Crigler is **ADOPTED IN PART** and **REJECTED IN PART**:
  - a. The court **ADOPTS** the Magistrate Judge's factual findings.
  - b. The court **REJECTS** the Magistrate Judge's finding that the evidence fails to show that Wilder was unequivocally directed by his client to appeal, or that he failed to counsel petitioner about an appeal and the Magistrate Judge's recommendation that respondent's Motion to Dismiss be granted and petitioner's Motion to Vacate, Set Aside, or Correct Sentence, pursuant to 28 U.S.C. § 2255, be denied.
2. Respondent's Motion to Dismiss is **DENIED**.
3. Petitioner's Motion to Vacate, Set Aside, or Correct Sentence, pursuant to 28 U.S.C. § 2255, shall be and hereby is **GRANTED** as to his claim that the ineffective assistance of counsel deprived him of his right to appeal the sentence imposed by the

judgment order signed and entered on June 30, 2006, in Criminal Case No. 3:04-cr-00092-8; and petitioner's remaining claims are **DISMISSED** without prejudice.

4. The Clerk of the Court **SHALL** prepare a new judgment in Criminal Case No. 3:04-cr-00092-8 in every respect the same as the previous judgment except as to date of entry.
5. Willis James Spaulding, II, Esq., appointed by the court to represent petitioner in the instant § 2255 action, **SHALL** consult with petitioner regarding the filing of a notice of appeal and, if so instructed by petitioner, **SHALL** file a notice of appeal on petitioner's behalf, within ten days of the date of entry of the judgment. Upon the filing of a notice of appeal, petitioner may file a motion in the Court of Appeals seeking the appointment of counsel to assist him with the appeal.
6. The Clerk **SHALL** close the instant § 2255 action, nothing further remaining to be done herein; however, the Clerk **SHALL** docket this Order and the accompanying Memorandum Opinion in both the instant case, Civil Action No. 7:07-cv-00253, and in Criminal Case No. 3:04-cr-00092-8.

The Clerk is directed to send copies of this Order and the accompanying Memorandum Opinion to petitioner and counsel of record for respondent.

**ENTER:** This 12<sup>th</sup> day of August, 2008.

  
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United States District Judge